



STATE OF NEW YORK

**UNEMPLOYMENT INSURANCE APPEAL BOARD**

PO Box 15126

Albany NY 12212-5126

**DECISION OF THE BOARD**

---

Mailed and Filed: AUGUST 30, 2022

IN THE MATTER OF:

Appeal Board No. 623091

PRESENT: MARILYN P. O'MARA, MEMBER

The Department of Labor issued the initial determination holding the claimant eligible to receive benefits, effective October 18, 2021. The employer requested a hearing and objected contending that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future.

The Administrative Law Judge held telephone conference hearings at which all parties were accorded a full opportunity to be heard and at which testimony was taken. There were appearances on behalf of the claimant and the employer. By decision filed April 18, 2022 (), the Administrative Law Judge overruled the employer's objection and sustained the initial determination.

The employer appealed the Judge's decision to the Appeal Board.

Based on the record and testimony in this case, the Board makes the following

**FINDINGS OF FACT:** The claimant worked for fourteen months, through October 15, 2021, as a podcast account representative. Prior to being hired, the claimant did the same job for the employer as a contractor. At the time of separation, she was working full time, and she worked remotely.

While the claimant was working as a contractor, the claimant's job included a particular writing task. The claimant performed this task and received

negative client feedback. The employer subsequently outsourced the writing task for the claimant and other podcast account representatives. Around August or September 2021, the employer determined that paying an outside contractor to perform this writing task was not cost-effective, and the employer reassigned this task back to the podcast account representatives, including the claimant. The claimant objected that she was not suited to this task.

In a Zoom call on October 14, 2021, the claimant, the CEO, and the human resources manager discussed their disagreement over the claimant's tasks. Approximately eight minutes into the call, the possibility of the claimant quitting came up, and the CEO said that the employer would accept the claimant's resignation and expect the claimant to continue working for another two weeks to transition her clients to other account representatives. The claimant expressed her willingness to resign if the employer did not contest her unemployment claim, but she said she preferred to keep working without performing this additional writing task, which she contended was outside her skill set. The conversation continued for approximately another 20 minutes with the employer asserting that the claimant was capable of performing the writing task satisfactorily and asserting that the claimant was refusing to do her assigned work, and the claimant asserting that she was not capable of performing the work adequately. The parties ultimately agreed that the claimant would separate from employment, and the employer would treat the claimant's separation as a quit. The human resources manager said she would work with the claimant through the resignation process. The claimant asked whether she and the human resources manager should set up another call. The human resources manager said she would think about the next steps and follow up with the claimant in the next couple of days to let her know what the process would be. The claimant thanked the CEO and human resources manager and said good-bye.

On the next three work days, the claimant did not participate in the employer's daily staff meetings. Nobody from the employer contacted the claimant to find out why she did not report to the staff meetings or advise her that she was required to continue reporting to staff meetings or risk being fired. On October 19, 2021, the CEO sent the claimant an email informing her that she was discharged for missing three staff meetings in a row.

**OPINION:** The credible evidence establishes that the employer discharged the claimant on October 19, 2021 for missing three staff meetings in a row. Significantly, however, the employer did not notify the claimant of the

employer's expectations going forward after the October 14 Zoom call. The transcript of this call shows that the claimant asked whether she and the human resources manager should schedule another call, and the human resources manager said she would think about the process and get back in touch with the claimant. No testimony or evidence shows that the human resources manager ever followed up on this plan, and the human resources manager testified that she did not contact the claimant to find out why the claimant was not reporting to the staff meetings. It also is uncontested that nobody from the employer notified the claimant that she would be discharged if she did not report to the staff meetings. The result is that the claimant was not on notice that she was jeopardizing her job. Therefore, her failure to report to the staff meetings is not misconduct. We also are not persuaded that the claimant separated by refusing to perform her assigned writing tasks. Even accepting the employer's interpretation of the claimant's actions, the employer did not discharge her for this refusal. The employer discharged her for not reporting to the staff meetings. Accordingly, we conclude that the claimant's job ended under non-disqualifying circumstances, and the claimant is allowed benefits.

DECISION: The decision of the Administrative Law Judge is affirmed.

The employer's objection, that the claimant should be disqualified from receiving benefits because the claimant lost employment through misconduct in connection with that employment and that wages paid to the claimant by such employer should not count in determining whether the claimant files a valid original claim in the future, is overruled.

The initial determination, holding the claimant eligible to receive benefits, effective October 18, 2021, is sustained.

The claimant is allowed benefits with respect to the issues decided herein.

MARILYN P. O'MARA, MEMBER